IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

C.O.C.P. No. 343 of 1989.
Date of Decision: November 17 , 2006.

Shankar Singh & Ors.

....**Petitioner**

through
Mr. M.L.Sarin, Sr.Advocate
with Mr. D.B.Singh, Advocate.

Versus

T.Shesham etc.

...**Respondent**
through
Mr. Kamal Sehgal, Senior Panel Counsel.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.

This contempt petition has been filed, inter-alia, alleging that despite a categoric direction issued by a Division Bench of this Court vide judgment dated 5.10.1987 passed in LPA No.658 of 1983, the respondents have not paid interest to the petitioners @ 9% per annum "from the date when possession of land was taken".

[2]. The facts may be briefly noticed. The petitioners were owners of land measuring 36 kanals 14 marlas situated within the revenue estate of village Bhadroya, Tehsil Pathankot, District Gurdaspur. The aforesaid land was requisitioned by the Defence Authorities in the year 1964 and possession thereof was taken from the petitioners on 17.7.1964. Thereafter

the said land was acquired by the Union of India under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as the `Act') by notification dated 18.2.1970 which was published in the Official Gazette dated 6.3.1970. The matter was referred to the Arbitrator for determination of compensation who gave his award on 29.12.1977. The petitioners preferred an appeal against the Arbitrator's award which was disposed of by a learned Single Judge of this Court on 6.4.1983. Still dissatisfied, the petitioners preferred LPA No.658 of 1983.

[3]. The Letters Patent Bench vide its judgment dated 5.10.1987 (Annexure P-1) partly accepted the appeal and held as follows:-

> "For the foregoing reasons, the market value of the land acquired is assessed at Rs.350/- per marla and the landowners are accordingly awarded compensation for the land acquired at this rate along with solatium at the rate of 30 per cent on such market value and interest thereon for the first year, from the date when the possession of the land was taken at the rate of 9 per cent per annum and thereafter the rate of 15 per cent till the date of payment of the compensation awarded".

[4]. According to the petitioners, they were entitled to compensation amounting to Rs.10,70,000/- after calculating the interest from the date of taking possession, i.e., 17.7.1964 but were paid a sum of Rs.786180.48 only by restricting the payment of interest from the date of "acquisition" instead of taking "possession" from them.

[5]. Alleging that the non-payment of interest to the petitioners

from the date of taking `possession' from them, i.e., 17.7.1964, is a willful and deliberate non-obedience of the judgment dated 5.10.1987, operative part of which has already been reproduced above.

[6]. The judgment dated 5.10.1987 of the Letters Patent Bench was impugned by the Union of India before the Hon'ble Supreme Court. Consequently, this petition was adjourned *sine-die* and has been re-listed on 6.1.2006 after the Hon'ble Supreme Court has upheld the judgment of this Court.

[7]. In response to the show cause notice, an affidavit dated 1.4.2006 has been filed by Mr. P.N.B.Sarma, Defence Estate Officer, Pathankot Circle, Pathankot, wherein it is reiterated that “the date of possession for lands acquired under Section 7 of the RAIP Act, 1952 is the date of acquisition only, i.e., the date of 'J' notification published in the Gazette of Punjab Government, i.e., 6.3.1970”. It is, thus, contended on behalf of the respondents that interest, in terms of the judgment dated 5.10.1987 passed by this Court, is liable to be paid w.e.f. 6.3.1970 only which has admittedly been paid and that the petitioners are not entitled to claim interest from the date when their lands were `requisitioned', i.e., 17.7.1964.

[8]. Though the judgment dated 5.10.1987 categorically entitles the petitioners to claim interest upon the compensation amount @ 9% per annum for the first year “from the date when possession of land was taken.....”, however, it is not explicit as to whether `the date of taking possession' shall be the date when the land was `requisitioned' or when it was subsequently `acquired'.

[9]. Section 3 of the Act empowers the competent authority to

make a requisition of an immovable property for a `public purpose'. Section 4 of the Act empowers the said competent authority to call upon the owner or any other person in possession of the requisitioned property "to surrender or deliver possession" thereof to it. Section 7 of the Act further empowers the Central Government to acquire the property which has already been requisitioned, of course, for a public purpose only. Sub-Section (3) of Section 7 further provides as follows:-

> "**(3) No property shall be acquired under this section except in the following circumstances, namely:-**
>
> (a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Central Government and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government; or
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> (b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property" (Emphasis applied).

[10]. From a combined reading of Sections 3,4 and 7 of the Act, it is apparent that when a property has been `requisitioned' and possession thereof taken by the competent authority for a `public purpose' and when the

Central Government is satisfied that some works have been constructed upon the land during the period of requisition at its expense and in order to secure or preserve the value and right to use of such works, or when the cost of restoring the property to the condition in which it was at the time of its requisition would be highly excessive, the Central Government may acquire the said land. In other words, at the time when the land is `acquired' under Section 7 of the Act, its `possession' has already been taken under Section 4 after it was `requisitioned' under Section 3 of the Act. There is, thus, no delivery of possession to the Central Government when it `acquires' the property which is already `requisitioned' under Section 3 of the Act. Such an `acquisition' only vests the title in the Central Government free from all encumbrances. The other effect would be that upon `acquisition', the period of `requisition' of the property comes to an end.

[11]. That a person is deprived of the right to possession and enjoyment of his property when it is requisitioned under Section 3 of the Act, has been duly recognized by the Hon'ble Supreme Court in the case of **Union of India v Hari Kishan Khosla (dead) By Lrs, 1993 Suppl(2) SCC, 149**.

[12]. In the present case, `possession' of the subject property was admittedly taken under Section 4 of the Act on 17.7.1964. The land was never released from requisitioning in terms of Section 6 of the Act. It was rather `acquired' as a requisitioned property by invoking powers under Section 7 of the Act. There was, thus, no delivery of possession by the petitioners to the Central Government upon acquisition of their land. The land is presumed to have been acquired by the Central Government having regard to the circumstances enumerated in sub-Section (3) of Section 7 of

the Act.

[13]. In the light of the above analysis of various provisions of the Act, the import of the judgment dated 5.10.1987 delivered by the Letters Patent Bench would bear a plain interpretation to mean that the petitioners are entitled to be paid interest from the date when `possession' of the land was taken from them under Section 4 of the Act of 1952, i.e., 17.7.1964. It may also be kept in view that the amount of compensation payable upon requisitioning of a property under Section 8(2) of the Act does not include any part of the total compensation to which an owner of the property is entitled to upon its acquisition. The payment, recurring or of actual losses/expenses incurred by an owner of the property at the time of its requisitioning or release there from, which are admissible to him under Section 8(2) of the Act have no bearing while determining the compensation for acquisition of such land under Section 7 of the Act.

[14]. The question, however, still arises as to whether the respondents can be held guilty of willful and deliberate violation of the orders passed by this Court? In my view, there was a serious dispute regarding correct interpretation of the judgment dated 5.10.1987. The respondents *bona-fidely* formed a view point which, however, upon a close legal scrutiny, has been found to be erroneous in law. It is well settled that *bona*-fide incorrect interpretation of a Court order does not constitute “civil contempt” as defined in under Section 2(b) of the Contempt of Courts Act, 1971. Reference can be made to the view taken by the Hon'ble Supreme Court in the case of **Indian Airports Employees Union v Ranjan Chatterjee,AIR 1999 SC,880.** The respondents, thus, deserve to be given a reasonable opportunity to act upon and comply with the judgment dated

5.10.1987 in terms of the clarification given above.

[15]. This petition is accordingly disposed of with a direction to the respondents to re-calculate the interest amount w.e.f. 17.7.1964 instead of 6.3.1970 and pay the arrears thereof to the petitioners within a period of three months from the date a certified copy of this order is received by them.

[16]. Rule discharged.

November 17 ,2006. **(SURYA KANT)**
dinesh **JUDGE**